

Amendment No. 1 to SB1103

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1103

House Bill No. 1046*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-1317, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) Any weapon that is possessed, used, or sold in violation of the law shall be confiscated by a law enforcement officer and declared to be contraband by a court of record exercising criminal jurisdiction.

(2)

(A) The sheriff or chief of police for the jurisdiction where the weapon was confiscated may petition the court for permission to dispose of the weapon in accordance with this section.

(B) If the weapon was confiscated by a judicial district drug task force, then the director of the task force where the weapon was confiscated may petition the court for disposal of the weapon in accordance with this section.

(C) If the weapon was confiscated by the department of safety, then the commissioner of safety may petition the court for disposal of the weapon in accordance with this section.

(D) If the weapon was confiscated by the Tennessee bureau of investigation, then the director may petition the court for disposal of the weapon in accordance with this section.

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(b) Any weapon declared contraband, secured by a law enforcement officer or agency after being abandoned, voluntarily surrendered to a law enforcement officer or agency, or obtained by a law enforcement agency, including through a buyback program, shall be, pursuant to a written order of the court:

(1) Sold in a public sale;

(2) Used for legitimate law enforcement purposes, at the discretion of the court; or

(3) Relinquished in accordance with subsection (i).

(c) If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, by a local law enforcement agency or a judicial district drug task force and if the court orders the weapon to be sold, then:

(1) It shall be sold at a public auction not later than six (6) months from the date of the court order. The sale shall be conducted by the sheriff of the county or the chief of police of the municipality in which it was seized or obtained;

(2) The proceeds from the sale shall be deposited in the county or municipal general fund and allocated solely for law enforcement purposes;

(3) The sale shall be advertised:

(A) In a daily or weekly newspaper circulated within the county.

The advertisement shall run for not less than three (3) editions and not less than thirty (30) days prior to the sale; or

(B) By posting the sale on a web site maintained by the state or a political subdivision of the state not less than thirty (30) days prior to the sale; and

(4) If required by federal or state law, then the sale can be conducted under contract with a licensed firearm dealer, whose commission shall not exceed twenty percent (20%) of the gross sales price. However, the dealer shall not hold any elective or appointed position within the federal, state, or local government in this state during any stage of the sales contract.

(d) If the weapon was confiscated, or obtained after being abandoned and secured, after being voluntarily surrendered, or through a buyback program, by the department of safety or the Tennessee bureau of investigation and if the court orders it to be sold, then it shall be turned over to the department of general services, which shall sell the weapon and dispose of the proceeds of the sale in the same manner as it currently does for other confiscated weapons.

(e) If the court orders the weapon to be retained and used for legitimate law enforcement purposes, then:

(1) Title to the weapon shall be placed in the law enforcement agency or judicial district drug task force retaining the weapon; and

(2) When the weapon is no longer needed for legitimate law enforcement purposes, it shall be sold in accordance with this section.

(f) If the weapon is sold, then the commissioner of safety or the director of the Tennessee bureau of investigation, the sheriff, chief of police, or director of the judicial district drug task force shall file an affidavit with the court issuing the sale order. The affidavit shall:

(1) Be filed within thirty (30) days after the sale;

(2) Identify the weapon, including any serial number, and shall state the time, date, and circumstances of the sale; and

(3) List the name and address of the purchaser and the price paid for the weapon.

(g) Notwithstanding any other provisions of this section:

(1) A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. The weapon shall be sold or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon; provided, that the requirements of subdivision (g)(2) have been met; and

(2) A law enforcement agency possessing a weapon declared contraband, retained as evidence in an official proceeding, secured after being abandoned, or surrendered by someone other than the owner shall use best efforts to determine whether the weapon has been lost by or stolen or borrowed from an innocent owner, and if so, the agency shall return the weapon to the owner, if ascertainable, unless that person is ineligible to possess, receive, or purchase such weapon under state or federal law.

(h)

(1) Except in accordance with this section, no weapon seized by law enforcement officials or judicial district drug task force members shall be used for law enforcement purposes, sold, or destroyed.

(2) No weapon seized by law enforcement officials or judicial district drug task force members shall be used for any personal use.

(i) Notwithstanding the provisions of this section, if the chief of police, sheriff, director of the judicial district drug task force, commissioner of safety, or director of the Tennessee bureau of investigation, depending upon who confiscated or obtained the

weapon, certifies to the court that a weapon is inoperable or unsafe, then the court shall order the weapon:

(1) Destroyed or recycled; or

(2) Transferred to a museum or historical society that displays such items to the public and is lawfully eligible to receive the weapon.

(j) A violation of this section is a Class B misdemeanor.

(k) Nothing in this section shall authorize the purchase of any weapon, the possession of which is otherwise prohibited by law.

(l)

(1) The commissioner of safety, the director of the Tennessee bureau of investigation, the executive director of the Tennessee alcoholic beverage commission, the executive head of any local law enforcement agency, or the director of a judicial district drug task force may petition the criminal court or the court in the official's county having criminal jurisdiction for permission to exchange firearms that have previously been properly titled, as specified by this section, to the law enforcement agency or the drug task force for other firearms, ammunition, or body armor suitable for use by the law enforcement agency or drug task force.

(2) The exchange of firearms for the specified items used for legitimate law enforcement purposes is permitted only between the department of safety, the director of the Tennessee bureau of investigation, the executive director of the Tennessee alcoholic beverage commission, a local law enforcement agency, a judicial district drug task force, and a licensed and qualified law enforcement firearms dealer.

(3) No firearm obtained by a law enforcement agency through a buyback program shall be eligible to be exchanged under this subsection (l).

SECTION 2. For purposes of promulgating rules or establishing policies or procedures, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it, and provisions requiring the sale or destruction of weapons shall only apply to weapons obtained on or after July 1, 2015.